(1) U-1240

माननीय छत्तीसगढ़ उच्च न्यायालय, बिलासपुर (छ.ग.)

(सैकंड अपील नम्बर 446 /2004) Single Bench

अपीलार्थी-गण ..... 1- सोढ़ूराम आयु 85 साल,
प्रतिवादी-गण आत्मज दाऊराम

2- राजन आयु 35 साल,
आत्मज सोढ़ूराम
दोनों जाति देवागंन
निवासी चांपा
तहसील चांपा
जिला जाजंगीर चांपा (छ.ग.)

P. R. No. 1985 law
Presented by Shri V.S. Thakur Kumar
dated 01.12.2004

--विरूद्ध --

उत्तरवादी-गण ..... R. 1- द्वारपाल आयु 70 साल,
वादी-गण आत्मज दाऊराम

R. 2-नारायण प्रसाद आयु 40 साल,
आत्मज द्वारपाल
दोनों जाति देवांगन
निवासी चांपा, तहसील चांपा
जिला जाजंगीर चांपा (छ.ग.)

द्वितीय अपील अन्तर्गत धारा 100 व्यवहार प्रक्रिया संहिता 1908

अपील का मूल्य 11,500=00 रूपये , वाद पत्र अनुसार न्याय शुल्क 1240=00 रूपये वत्सा ।

माननीय तृतीय अपर जिला न्यायाधीश (फास्ट ट्रेक कोर्ट) जाजंगीर द्वारा प्रथम अपील क्रमांक 5-अ/2004 में पारित निर्णय और डिक्री के विरूद्ध अपील जो दिनांक 23/08/2004 को पारित किया गया और अपील खारिज किया गया.

उक्त प्रथम अपील व्यवहार वाद क्रमांक 72-अ/96 द्वारपाल वगैरह बनाम सोढ़ूराम वगैरह न्यायालय व्यवहार न्यायाधीश वर्ग-1, जाजंगीर द्वारा पारित निर्णय और आज्ञप्ति दिनांक 28/04/2001 से उत्पन्न हुआ.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No.446/05 **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	19.02.2007 Shri Sri Kumar Agrawal, Senior Advocate with Shri Anand Kumar Gupta, counsel for the appellants. Shri Rajeev Shrivastava, counsel for the respondents. Heard on I.A. No. 481/2007 which is an application under Order 41 Rule 27 of C.P.C whereby the appellants/defendants have prayed for taking the copy of the written statement filed by the respondents/plaintiffs Dwarpal in an earlier suit No. 8A/1994 on record. In the said written statement the respondent/plaintiff is shown to have made an admission that no family partition took place between the parties. No such ground was taken by the appellants either in the lower Court or in the 1st Appellate Court. Learned counsel for the appellants/defendants fairly conceded that the suit property involved in the earlier suit and the suit property involved in this appeal are not the same. It is also pertinent to note that in the written statement filed by the appellants/defendants in civil suit No. 72-A/1996 there is a clear admission in para 16 that a partition had taken place between Sodhuram, Noharsai and Dwarpal on 16.3.1954 wherein suit house and land had fallen to the share of Dwarpal. Although this admission was followed by certain averments made by the defendants, no evidence was led by them to prove the same. It is also pertinent to note that in para 12 and para 16 of the statement on oath of the appellant/defendant Sodhuram, there is a clear admission by him that in the family partition that took place in the year 1954, the suit house and land had fallen to the share of Dwarpal who continued in possession thereof.	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 446 **सन्** 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-2-	

In view of the pleadings in the written statement as also the testimony in para 12 and 16 on oath of Sodhuram, the prayer made in I.A. No. 481/2007 is liable to rejection. I.A. No. 481/2007 is accordingly dismissed.

Heard on admission.

The appellant is aggrieved by the judgment and decree dated 23.8.2004 passed by the 3rd Addl. Sessions Judge (FTC) Janjgir in first appeal No. 5-A/1994 affirming the judgment and decree passed by the Civil Judge Class-I Janjgir in civil suit No. 72-A/1996 dated 28.4.2001 for demolition of the super structure on the suit land and for delivery of vacant possession to the respondent/plaintiff. The finding recorded by both the Courts below that the suit lands had fallen to the share of respondent/plaintiff Dwarpal in a family partition that took place in 1954 is not only an admitted fact but is also based on the oral evidence led by the respondents/plaintiffs and a clear admission made by Sodhuram the appellant/defendant in para 12 and 16of his testimony.

In this view of the matter, a concurrent finding of fact has been recorded by both the Courts below. I have perused the record of civil suit No.72-A/1996, the evidence, documentary as well as oral, led by the parties and I am of the considered opinion that no substantial question of law arises for adjudication in this second appeal.

Consequently, this second appeal is dismissed at the stage of admission.

Accordingly, M.C.P. No. 1284/2004 for grant of stay is also dismissed. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

P.T.O.

Priya